

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs June 24, 2008

STATE OF TENNESSEE v. THADDEUS EUGENE REID

Appeal from the Criminal Court for Hamilton County
No. 255036 Don W. Poole, Judge

No. E2007-01056-CCA-R3-CD - Filed August 21, 2008

The Defendant, Thaddeus Eugene Reid, was convicted of three counts of aggravated rape¹ and one count of aggravated burglary² after a jury trial. In this direct appeal, the Defendant makes the following claims that: (1) the evidence below was insufficient to support his convictions; (2) the presence of additional security at trial prejudiced the jury against him; (3) the trial court unconstitutionally increased his sentence because enhancement factors were not found by a jury; (4) the trial court improperly admitted certain evidence, including a CODUS report, a cleaning solution, a picture of the Defendant and his alleged accomplice, and a rape crisis center report; (5) the trial court improperly allowed the Defendant's previous convictions for criminal impersonation to be used for impeachment; and (6) the prosecution engaged in misconduct during closing argument which should have resulted in a mistrial. Each of his points of error either lacks merit or has been waived by lack of argument or citation. Accordingly, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and ROBERT W. WEDEMEYER, JJ., joined.

John G. McDougal, Chattanooga, for the appellant, Thaddeus Eugene Reid.

Robert E. Cooper, Jr., Attorney General and Reporter; Renee W. Turner, Assistant Attorney General; and William H. Cox, III, District Attorney General, for the appellee, State of Tennessee.

OPINION

¹ See Tenn. Code Ann. § 39-13-502.

² See Tenn. Code Ann. § 39-14-403.

Factual Background

The crimes in this case occurred beginning about noon on April 20, 2005. At that time R.D.,³ the victim, was fifteen years old. Having stayed home from school that day, she was upstairs in the Chattanooga residence she shared with her mother.

The victim testified that she first heard a knock on her front door. She went downstairs but did not recognize the man she saw outside. She then heard a knock on her neighbor's door and waited until the man at the front door had left before returning upstairs. She was in the upstairs bathroom when she heard "a boom noise" from downstairs. She first assumed the noise was a problem with the oven, in which she was baking biscuits. Instead, it was the sound of the Defendant and his accomplice kicking in the backdoor.

The victim started downstairs to investigate, but on the way, she met the Defendant as he came up the stairs. The Defendant grabbed the victim, put his hand over her mouth, and told her to be quiet and that he was not going to hurt her. He then took the victim to the bedroom, forced her onto the bed, and removed her clothing. The victim screamed, at which point the Defendant hit her with his hand. He then penetrated her vaginally.

The Defendant's accomplice entered the bedroom. About that time, the Defendant noticed the victim looking at his reflection in her bedroom mirror. She continued to scream. In response, the Defendant told his accomplice to hand over the accomplice's gun. The Defendant, now holding the gun, hit the victim with it. After this, there was a period of time, apparently about an hour, during which both the Defendant and his accomplice penetrated the victim. The Defendant penetrated her both anally and orally. Both men then held the victim on the bed with a towel over her head while washing her with a cleaning solution they had found in the bathroom. After taking some valuables, they left the house.

The victim called her mother, who immediately returned home from work. The police, having received a call from the victim's mother, arrived soon after and began investigating the scene. An ambulance also arrived.

The victim's mother rode with her daughter in the ambulance to T.C. Thompson Children's Hospital. She and the victim later went to the Partnership Sexual Assault Crisis and Resource Center (Partnership). At Partnership, nurse practitioner Ardyce Rudulfo performed a medical examination on the victim, including a pap smear and rectal examination. Ms. Rudulfo observed bruises under the victim's eye and on her chin, temple, and lower left leg. There were two lacerations on the victim's neck, and she had an abrasion on her temple. Ms. Rudulfo also found abrasions and a number of tears in the victim's vaginal area, abrasions and tears in the victim's rectal area, and a quantity of "bright red blood" in her rectal folds. Ms. Rudulfo testified that such tears and abrasions indicate forced penetration.

³ It is the policy of this Court to refer to a minor victim by his or her initials.

Ms. Rudulfo put together a rape kit, which was sent to the Tennessee Bureau of Investigation (TBI). The rape kit included, among other things, a sample of blood found on the victim's arm. Detective Julius Johnson of the East Ridge Police Department investigated the crime scene. During the course of his investigation, he noticed blood on a piece of carpet in the victim's home. Blood was also discovered on the victim's socks. The carpet and socks were sent to the TBI as well.

Charles Hardy, an employee of the TBI's serology and DNA unit, performed DNA analysis on these blood samples and cross-referenced the samples with the Defendant's previously recorded DNA entry in the "CODUS" database. DNA found in each blood sample matched that of the Defendant.

The Defendant pleaded guilty to aggravated burglary at the beginning of trial. He also testified in his own defense at trial, claiming that he had entered the house solely to commit theft and that only his accomplice raped the victim. The jury returned verdicts of guilty on each of the three counts of aggravated rape. The trial judge sentenced the Defendant as a Range II, multiple offender to thirty-eight years for each count of aggravated rape, to be served concurrently, and to ten years for the count of aggravated burglary, to be served consecutively, for a total effective sentence of forty-eight years.

Analysis

I. Sufficiency of the Evidence

The Defendant first contends that the evidence introduced at trial was insufficient to convict him. The Defendant simply asserts that there was not sufficient evidence to show that he committed the crimes. Although the Defendant makes no citation to the record to support his argument, we will briefly address the sufficiency of the evidence.

Tennessee Rule of Appellate Procedure 13(e) prescribes that "[f]indings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt." A convicted criminal defendant who challenges the sufficiency of the evidence on appeal bears the burden of demonstrating why the evidence is insufficient to support the verdict, because a verdict of guilt destroys the presumption of innocence and imposes a presumption of guilt. See State v. Evans, 108 S.W.3d 231, 237 (Tenn. 2003); State v. Carruthers, 35 S.W.3d 516, 557-58 (Tenn. 2000); State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). This Court must reject a convicted criminal defendant's challenge to the sufficiency of the evidence if, after considering the evidence in a light most favorable to the prosecution, we determine that any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); State v. Hall, 8 S.W.3d 593, 599 (Tenn. 1999).

On appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable and legitimate inferences which may be drawn therefrom. See Carruthers, 35 S.W.3d at 558; Hall, 8 S.W.3d at 599. A guilty verdict by the trier of fact accredits the testimony of the State's witnesses and resolves all conflicts in the evidence in favor of the prosecution's theory. See State

v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). Questions about the credibility of witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, and this Court will not re-weigh or re-evaluate the evidence. See Evans, 108 S.W.3d at 236; Bland, 958 S.W.2d at 659. Nor will this Court substitute its own inferences drawn from circumstantial evidence for those drawn by the trier of fact. See Evans, 108 S.W.3d at 236-37; Carruthers, 35 S.W.3d at 557.

The Defendant admitted, on the witness stand and through his plea of guilty to aggravated burglary, that he entered the victim's house without the effective consent of the owner. The victim testified unequivocally that the Defendant penetrated her orally, anally, and vaginally without consent, noting that she saw Defendant's face in her bedroom mirror while the rape took place. The victim also testified that the Defendant used a deadly weapon to commit the rape and that he was assisted by an accomplice. Ms. Rudulfo testified that the victim suffered bodily injury during the rape. Mr. Hardy found the Defendant's DNA in the blood samples taken from the victim's arm and socks and from a piece of carpet taken from the crime scene. Having reviewed this evidence in the light most favorable to the State, we find it more than sufficient to support the Defendant's convictions for three counts of aggravated rape and one count of aggravated burglary beyond a reasonable doubt.

II. Improper Sentencing

The Defendant next contends that the imposition of his sentence was unconstitutional because the facts enhancing his sentence were not found by a jury. A mandatory sentencing structure which allows the sentencing judge to find enhancement facts by a preponderance of the evidence is a violation of the Sixth Amendment to the United States Constitution. Blakely v. Washington, 542 U.S. 296, 313 (2004) (holding that "every defendant has the right to insist that the prosecutor prove to a jury all facts legally essential to the punishment"). Tennessee no longer has such a sentencing structure; the 2005 Amendments to the Sentencing Reform Act of 1989 cured Tennessee's sentencing structure of any constitutional violations under Blakely. Cunningham v. California, 127 S.Ct. 856, 871 n.18 (2007) (citing Tennessee Code Annotated section 40-35-210(c) as a statute that "permit[s] judges genuinely 'to exercise broad discretion . . . within a statutory range,' which 'everyone agrees' encounters no Sixth Amendment shoal"). See also State v. Carter, 254 S.W.3d 335, 343 (Tenn. 2008) (stating that the 2005 Amendments were enacted "in order to avoid the constitutional violation arising from a trial court increasing a presumptive sentence on the basis of judicially-determined enhancement factors").

The 2005 Amendments went into effect on June 7, 2005, about ten weeks after the crimes in this case were committed; as a result, they would not ordinarily have applied to the Defendant. The Defendant elected to be sentenced under the 2005 Amendments, however, and signed an ex post facto waiver to that effect. Thus, the trial court's application of enhancement factors to the Defendant's sentence did not violate his Sixth Amendment rights. We conclude that this issue is without merit.

III. Proximity of Court Officers to the Defendant

Four days before trial the Defendant had participated in an attempt to escape from custody that left one guard badly injured and another subdued. Concerned about security, the sheriff had fitted the Defendant's leg with a taser bracelet not visible to jurors. Two additional court officers were seated behind the Defendant at trial in order to catch him and prevent injury in the event the bracelet needed to be engaged. The Defendant contends that the court failed to properly consider whether the presence of these officers unduly prejudiced his client.

The Defendant does not, however, offer argument, citation to relevant authority, or citation to the record in support of this contention. This issue is accordingly waived. Tenn. R. Crim. App. 10(b); See also Tenn. R. App. P. 27(a)(7).

IV. Evidentiary Admissions

The Defendant next contends that the trial court erred in denying his motion to suppress DNA information from the "CODUS" database and erred in admitting a sample of the type of cleaning solution the Defendant used to clean the victim, a picture of the Defendant with his accomplice the following morning, and the report from the Partnership Sexual Assault Crisis and Resource Center. Because the Defendant's brief contains no citation to the record with respect to these issues, each is waived. Id.

V. Use of Criminal Impersonation Convictions for Impeachment

The Defendant next offers a bare assertion that the trial court erred in admitting his previous convictions for impeachment purposes. The argument contains no citation to the record and no citation to any legal authority to support the claim. This issue is waived. Id.

VI. Prosecutorial Misconduct

Finally, the Defendant alleges that the prosecution committed misconduct during closing argument by asking the jury to put itself in the place of the victim and that the trial court erred in failing to declare a mistrial. First, we note that the Defendant did not request a mistrial from the trial court, which would usually result in a waiver of the issue. Tenn. R. App. P. 36(a). We conclude that the issue is further waived because the Defendant's brief fails to include sufficient argument, citation to relevant legal authority, or citation to the record. Tenn. R. Crim. App. 10(b); see also Tenn. R. App. P. 27(a)(7).

Conclusion

For the foregoing reasons, the judgments of the trial court are affirmed.

DAVID H. WELLES, JUDGE